

## MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

SENTENCE BY A PERSON IN FEDERAL CUSTODY, *Petition for writ of**Coram Nobis and For Preliminary Judgment, and For Other Relief*

United States District Court		District of <i>Northern Mariana Islands</i>	FILED Clerk District Court MAY 29 2008
Name (under which you were convicted): <i>JOHN S. PANGELINAN</i>		Docket or Case No.: <i>00400-005</i>	
Place of Confinement: <i>Minimum Security Facility, Saipan, CMF</i>		Prisoner No.: <i>00400-005</i>	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted)	
v. <i>JOHN S. PANGELINAN</i>		By <i>For The Northern Mariana Islands</i> (Deputy Clerk)	

## MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

*U.S. District Court for the Northern Mariana Islands, 1st Fl., Horiguchi Bldg., Saipan, Commonwealth of the Northern Mariana Islands.*(b) Criminal docket or case number (if you know): *Criminal Case No. 06-00012*

2. (a) Date of the judgment of conviction (if you know):
- October 19, 2007*

(b) Date of sentencing: *October 19, 2007*

3. Length of sentence:

4. Nature of crime (all counts): *One Year Imprisonment (already served) and One Year supervised release**Count II of Obstruction of Court Order for violation of 18 U.S.C. § 1509.*

5. (a) What was your plea? (Check one)

(1) Not guilty ☒(2) Guilty ☐(3) Nolo contendere (no contest) ☐(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? *N/A*

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the <sup>amended</sup> judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:
- (a) Name of court:
- (b) Docket or case number (if you know):
- (c) Result: N/A
- (d) Date of result (if you know):
- (e) Citation to the case (if you know):
- (f) Grounds raised:

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know):
- (2) Result:
- (3) Date of result (if you know):
- (4) Citation to the case (if you know): N/A
- (5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this <sup>amended</sup> judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court:
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: District Court lacked subject matter jurisdiction in the Article III sense of the U.S. Constitution for obstruction of void court order in Civil Action No. 97-0073.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Obstructed district court order is void because district court in Civ. A. 97-0073 was without Art. III subject matter jurisdiction (plaintiffs (1) suffered no injury (no standing) and (2), if injured, injury (standing) is too remote in the prudential sense); was without personal jurisdiction for insufficiency of service of process; and also, without personal jurisdiction for invalidity of CNMI long-arm statute -- not over the defendants. Facts: 1) District court found ~~defendants~~ plaintiffs unable to be paid wages owed them by Papa's, Ltd., because assets of Papa's, Ltd., were transferred to Pangolinan for valuable consideration and thereby judgment-proofed the corporation. 2) Service of process (summons and complaint) was by mail only which was received not by defendant Pangolinan but by their daughter Fac. 3) CNMI is not a state but a territory under complete sovereignty of the U.S.A..

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

N/A

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: 28 U.S.C. § 2255 habeas motion

Name and location of the court where the motion or petition was filed: U.S. District Court for the Northern Mariana Islands, 1<sup>st</sup> Fl., Horiguchi Bldg., BANAPAN, SAIPAN, CNMI.

Docket or case number (if you know): *Civil Action No. 07-0027*

Date of the court's decision: *October 29, 2007*

Result (attach a copy of the court's opinion or order, if available): *Court denied it because it deemed Pangolinan no longer "in custody" as he had already served fully his original sentence of imprisonment.*

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒ *9th Circuit Court limited issues in the appeal only to questions of "in custody" and "second and successive".*

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: *U.S. Court of Appeals for the Ninth Circuit, San Francisco, California.*

Docket or case number (if you know): *Case No. 07-17395*

Date of the court's decision: *No decision yet.*

Result (attach a copy of the court's opinion or order, if available): *No decision yet. But it will certainly not be on the merits.*

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

*N/A*

GROUND TWO: *District court lacked Article III (U.S. Constitution) subject-matter jurisdiction as 18 U.S.C. § 1509 is not applicable to Pangolinan as a "party or privy" to the obstructed court order.*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

*Obstructed court order emanated from Civ. A. No. 97-0073 in which Pangolinan was a defendant--a party. Pangolinan believes that the jury in the criminal case found this as a fact.*

## (b) Direct Appeal of Ground Two:

- (1) If you appealed from the <sup>amended</sup> judgment of conviction, did you raise this issue? *No appeal was made on the Amended judgment of October 19, 2008.*  
 Yes ☐ No ☐
- (2) If you did not raise this issue in your direct appeal, explain why:

*N/A*

## (c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒ No ☐

- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: *28 U.S.C. 2255 habeas motion.*

Name and location of the court where the motion or petition was filed: *U.S. District court for the Northern Mariana Islands, HCN, Haguichi Bldg., GARAPAN, SAIPAN, CNMI.*

Docket or case number (if you know):

*Civil Action No. 07-0027*

Date of the court's decision: *October 29, 2007*

Result (attach a copy of the court's opinion or order, if available): *Court denied it because it deemed Pandellian no longer "in custody" as he had already served fully his original sentence of imprisonment.*

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No ☐

- (5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒ *9th Circuit Court limited issues in the appeal only to questions of "in custody" and "second and successive".*

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: *U.S. Court of Appeals for the Ninth Circuit, SAN FRANCISCO, CA California.*

Docket or case number (if you know): *CASE No. 07-17395*

Date of the court's decision: *No decision yet.*

Result (attach a copy of the court's opinion or order, if available): *No decision yet. But it certainly will not be on the merits.*

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: *N/A*

GROUND THREE: *Go To Four (Ground Four).*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

*REQUEST: Court is requested to grant Pangolinan leave to access his computer to prepare and submit a supplemental memorandum (argument) in support of his motion.*

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: *PANG LIWAN'S PRESENT IMPRISONMENT IS ILLEGAL AS THE TRIAL, CONVICTION AND SENTENCE WAS TAINTED BY JUDGE WISEMAN'S*  
(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
*EXTREME PARTIALITY IN THE UNDERLYING CIVIL AND CRIMINAL CASES, WHICH IS CONTRARY TO THE DUE PROCESS CLAUSE OF THE CONSTITUTION.*

(b) **Direct Appeal of Ground Four:**

- (1) If you appealed from the <sup>amended</sup> judgment of conviction, did you raise this issue? *No appeal on the amended judgment entered on October 19, 2008 was made.*  
Yes ☐ No ☐
- (2) If you did not raise this issue in your direct appeal, explain why: *N/A*

(c) **Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?  
Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

*N/A*

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

*N/A*

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

*N/A*

- (5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

*N/A*

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

*N/A*

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

*N/A*

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: *Because Judge Wiseman's ~~partiality~~ partiality was not alleged until Pangelinas lawsuit was filed against him as one of the defendants in Civil Action No. 08-0004 and his "admission" by his default.*

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

*Ground Four - It had not arose yet and was not ripe yet, when the other grounds were presented.*

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

*This motion is on the Amended Judgment entered on October 19, 2007. The pending appealed motion is on the original judgment entered on ~~Octob~~ JANUARY 4, 2007.*

15. Give the name and address, if known, of each attorney who represented you in the following stages of the <sup>amended</sup> judgment you are challenging:

(a) At preliminary hearing: *N/A*

(b) At arraignment and plea: *N/A*

(c) At trial: *N/A*

(d) At sentencing: *N/A*

(e) On appeal: *N/A*

(f) In any post-conviction proceeding: *N/A*

(g) On appeal from any ruling against you in a post-conviction proceeding: *N/A*

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒ *N/A*

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: *vacate and set aside judgment (unremanded) in, and dismiss, Crime A. #06-00012; issue writs of coram nobis or declaratory judgment under 28 U.S.C. § 2201 & 2202 vacating and setting aside judgments in Crime A. #04-00005 and #02-00016, and dismissing them altogether or any other relief to which movant may be entitled, and vacating and setting aside final judgment, under 28 U.S.C. § 2201 & 2202, in Civil Action No. 97-0003, and dismissing it altogether.*

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct *to the best*  
~~and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on~~

(month, date, year)  
*of my knowledge and recollection.*

Executed (signed) on May 29, 2008 (date).

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*[Signature]*  
 Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

# **Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody**

(Motion Under 28 U.S.C. § 2255)

## **Instructions**

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:  

Clerk, United States District Court for The Northern Mariana Islands  
 Address P.O. Box 501221, Saipan, MP 96950  
 City, State Zip Code
9. **CAUTION:** You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.